

COMMENTS BY

GLOBAL 2-WAY, INC.

**Concerning
Federal Motor Carrier Safety Administration
Docket No. FMCSA-2001-11117**

**Limitations on the Issuance of Commercial Driver's Licenses with a
Hazardous Materials Endorsement**

Interim Final Rule

June 10, 2003

**Before the United States
Department of Transportation
Federal Motor Carrier Safety Administration
Washington, DC 20590**

In the Matter of:	}	
	}	
Limitations on the Issuance of Commercial Driver's Licenses With A Hazardous Materials Endorsement	}	Docket No. FMCSA-2001-11117
	}	
	}	

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SUMMARY

On September 11, 2001, terrorists killed nearly 3,000 people in New York City and Washington, DC, primarily by using aviation fuel as a weapon of mass destruction. Motor vehicles carrying large quantities of fuel and other hazardous materials are in immediate danger of being used in a similarly devastating terrorist attack on the United States.

The Government has repeatedly acknowledged both the severity and immediacy of this threat, but its priorities in countering this serious danger are badly misplaced. The Federal Motor Carrier Safety Administration's ("FMCSA's") newly-issued rule requiring background checks on drivers of trucks carrying hazardous materials¹ fails to confront, in

¹ FMCSA, Interim Final Rule, "Limitations on the Issuance of Commercial Driver's Licenses with a Hazardous Materials Endorsement," 68 Fed. Reg. 23844 (May 5, 2003), Docket No. FMCSA-2001-11117 (hereinafter, "the CDL Background Check Rule."). *See also* two complementary rules, Transportation Security Administration ("TSA"), Interim Final Rule, "Security Threat Assessment for Individuals

any direct or immediate way, the danger that a truck laden with explosive, highly flammable or toxic materials will be hijacked, diverted into a densely-populated area and used to kill hundreds or thousands of innocent people. Another recently-finalized security rule requires hazardous materials shippers and carriers to prepare “security plan” documents.²

It will cost shippers, motor carriers and federal and state taxpayers hundreds of millions of dollars to implement the Security Plan and CDL Background Check Rules, but neither rule requires any concrete action that could prevent a hazardous materials-based terrorist attack tomorrow. Global 2-Way, Inc. (“Global 2-Way”), one of the nation’s largest providers of land mobile and wireless communications systems,³ respectfully suggests that the Government’s headlong rush to create new documentation may inadvertently discourage private companies from committing the financial and other resources necessary for immediate and ubiquitous deployment of technology that makes it possible – today – to detect and physically intercept a vehicle that is about to be used as a weapon.

I. THERE IS AN IMMEDIATE RISK THAT TERRORISTS WILL USE MOTOR VEHICLES TO CAUSE MASSIVE DEATH AND DESTRUCTION.

There are 800,000 shipments of hazardous materials in the United States each day, 95 percent of which are made by highway.⁴ More than 82 percent of those deliveries are flammable materials.⁵ Obviously, the Government has noted, these shipments “potentially may be used as weapons of mass destruction or in the manufacture of such weapons.”⁶ Fuel tank trucks have been used in terrorist attacks overseas, and intelligence indicates that terrorists “may be planning to use motor vehicles transporting certain hazardous materials” here in the United States.⁷

The Government acknowledges that this security threat is “ongoing and significant” because “[h]azardous materials are frequently transported in substantial quantities . . . and

Applying for a Hazardous Materials Endorsement for a Commercial Driver’s License,” 68 Fed. Reg. 23852 (May 5, 2003), Docket No. TSA-2003-14610 (hereinafter, “the TSA Threat Assessment Rule”), and Research and Special Programs Administration (“RSPA”), Interim Final Rule and Request for Comments, “Hazardous Materials: Enhancing Hazardous Materials Transportation Security,” 68 Fed. Reg. 23832 (May 5, 2003), Docket No. RSPA-03-14982 (HM-232C).

² RSPA, Final Rule, “Hazardous Materials: Security Requirements for Offerors and Transporters of Hazardous Materials,” 68 Fed. Reg. 14510 (March 25, 2003), Docket No. RSPA-02-12064 (HM-232) (hereinafter, “the Security Plan Rule”).

³ Global 2-Way products and services are described on the internet at www.global2way.com

⁴ RSPA, Advance Notice of Proposed Rulemaking, “Security Requirements for Motor Carriers Transporting Hazardous Materials,” 67 Fed. Reg. 46622 (July 16, 2002), Docket No. FMCSA-02-11650 (HM-232A) (hereinafter, “the Technology Study”).

⁵ Technology Study Docket, Comments by the National Private Truck Council (Nov. 15, 2002) at 3.

⁶ Technology Study at 46622.

⁷ *Id.*

... in proximity to large population centers.”⁸ In fact, these daily shipments include “millions of tons of explosive, poisonous, corrosive, flammable and radioactive materials.”⁹ This is not just an every day risk; it occurs *several thousand times each day*.

II. THE NEW RULES CREATE PAPERWORK INSTEAD OF ADDRESSING REAL-WORLD THREATS.

The Security Plan Rule requires shippers and carriers to think about “risks related to the transportation of hazardous materials in commerce,” including “en route security risks,” and to prepare a document that “includes methods to address the possibility that unauthorized persons may attempt to gain access to hazardous materials”¹⁰ While the Government has a legitimate role in encouraging shippers and carriers to think about the unthinkable, the last thing industry needs is more paperwork. To fight terrorism, a fleet management center does not need more documents. It needs the ability to see, in real-time, that one of its trucks, which is supposed to be in Pennsylvania, is instead on Pennsylvania Avenue, barreling toward the White House.

The Government’s other new rule is vastly more expensive and even farther off the mark. It requires full-blown FBI background checks on 3.5 million commercial truck drivers whose driver’s license documents (Commercial Driver’s Licenses or “CDLs”) are marked with a “hazardous materials endorsement.” Clearly, it will be several years before the Government is satisfied that it has purged all terrorists from the rolls of licensed hazardous materials truck drivers. TSA has not yet begun to establish procedures for collecting and processing 35 million fingerprints (10 from each driver), and all 51 licensing jurisdictions will have to modify their procedures for issuing CDLs before the scheme can be completed.¹¹ The end result, after all the trouble and expense, will be two sets of documents. One group will consist of 3.5 million legitimate CDL cards with an “H” printed on them. The second group will be the fake CDLs, which will continue to be as readily available to a terrorist as the fake driver’s licenses that are sold to underage drinkers on every college campus in America.¹²

September 11 proved that hijackers do not need licenses. It takes a box-cutter, not a “hazardous materials endorsement,” to point a dangerous load at a crowded government building; and it will take more than a “security plan” document to stop a truck.

⁸ RSPA, Notice of Proposed Rulemaking, “Hazardous Materials Security Requirements for Offerors and Transporters of Hazardous Materials,” 67 Fed. Reg. 22028, 22030 (May 2, 2002), Docket No. RSPA-02-12064 (HM-232) (hereinafter, “the Security Plan Notice”).

⁹ Security Plan Notice at 22028.

¹⁰ Security Plan Rule at 14516. *See also* new 49 U.S.C. § 172.802(a)(3).

¹¹ TSA Threat Assessment Rule at 23865, 23867.

¹² States are not required to make their CDLs any more “tamperproof” than a regular driver’s license. 49 C.F.R. § 383.155. Congress has allowed the states to include “biometric identifiers” in CDLs, 49 U.S.C. § 31308, but federal regulations require nothing more useful for authentication than a “color photograph,” 49 C.F.R. § 383.153(a)(4).

III. THE NEW PAPERWORK REQUIREMENTS WILL DIVERT FINANCIAL AND OTHER RESOURCES THAT WOULD BE BETTER SPENT ON TECHNOLOGY CAPABLE OF IDENTIFYING AND INTERCEPTING A HIJACKED TRUCK BEFORE IT REACHES A NEW ‘GROUND ZERO.’

To prevent commercial airliners from being used as fire-bombs again, the Government keeps many eyes and ears on the skies every day. If radio and radar systems suddenly failed, no effort or expense would be spared to re-establish communications with flight crews and to detect any aircraft that have suddenly changed course. The last thing on the Government’s mind would be to begin background checks on all the pilots or to ask to see the airlines’ security plans. Unfortunately, however, this is how the Government has begun to deal with the immediate threat of a terrorist attack from the highways, rather than the airways.

The government’s new CDL Background Check Rule is already costing U.S. taxpayers \$5.2 million, just to compare the names of CDL holders with names in crime databases.¹³ Cash-strapped state governments have been commanded to cough up almost \$1 million to modify software and make other changes to implement the new federal mandate.¹⁴ But these costs are pocket change, compared to the estimated expenses of collecting and processing fingerprints, issuing notices adjudicating appeals and processing waivers. The price tag, in the first decade alone, adds up to \$633 million.¹⁵ This commitment of effort and money for un-quantified “increased protection . . . from acts of terrorism”¹⁶ is monumental, especially in light of the fact that the entire exercise will never make it easier to detect a September 11-style hijacking or to keep hijacked hazardous materials from being unleashed on an unsuspecting target.

Likewise, the Government admits that its new Security Plan Rule will cost nearly \$100 million in the first five years, more than half of which will come out of the pockets of shippers and carriers in the first year.¹⁷ This is not to *do* anything – this is just to assemble paperwork to prove they have *thought about* doing something.

Both of the new rules were issued without adequate notice and opportunity for public comment. In stark contrast, the Government seems to have invited potentially endless comment concerning “the feasibility of” various ways to prevent hijacking and to locate trucks after they have been commandeered by terrorists. The Government’s list of options ranges from the long-ago discredited “pre-notification” of state and local officials to well-established, mature technology for “tracking shipments, communicating with

¹³ Threat Assessment Rule at 23867.

¹⁴ *Id.*

¹⁵ *Id.* at 23865-66.

¹⁶ *Id.* at 23867.

¹⁷ Security Plan Rule at 14520.

drivers . . . protect[ing] shipments from hijacking or provid[ing] an early indication of a potential security problem.”¹⁸

The Government should not need months or years to realize that vehicle tracking and monitoring systems are already well-established and operational in thousands of trucks carrying hazardous materials and other cargo every day. Although these systems were installed primarily for commercial reasons – e.g., to eliminate empty runs and assure just-in-time delivery – vehicle tracking hardware and software offer the only effective means for fleet managers to detect that a truck or cargo is “out-of-route” and under the control of a stranger. It is possible – here and now – to give every fleet manager for every load of explosives, fuel, toxic agents or any other cargo – the ability to see and do with trucks what airlines and the FAA see and do with commercial aircraft.

For example, Global 2-Way’s service, Global T-Fleet, can provide instant location of a vehicle and load, constant driver contact, a panic button and other capabilities for less than \$20 per month. Global T-Fleet’s transceiver with GPS uses only 1 watt of power and sends signals, without “line of sight” to a fixed receiver, over Global 2-Way’s Digital High Frequency FM radio network.¹⁹ A hijacked truck, therefore, could be located amongst the skyscrapers of mid-town Manhattan or under a bridge.

While shippers and carriers are voluntarily deploying vehicle and tracking and monitoring systems to lower logistics costs, the obvious security benefits, especially for trucks carrying the most dangerous hazardous materials, should put these systems on the Government’s “front burner.” The Security Plan and CDL Background Check Rules commit government and industry to spend more than three quarters of a billion dollars on paperwork.²⁰ The \$60 million the Government has committed to spend on these rules in the coming few months alone could, instead, install tracking and monitoring systems on virtually every major shipment of explosives, deadly gases and toxic agents in America. Unlike the new paperwork rules, serious *and immediate* Government efforts to promote, reward, require or otherwise encourage tracking and communications systems would be “prudent, common-sense security measures that are in-line with public expectations about the need to take action to protect hazardous materials shipments from terrorist acts.”²¹

CONCLUSION

For the foregoing reasons, Global 2-Way urges the Government to “put first things first” by recognizing the need for immediate and ubiquitous deployment of technology capable of detecting and physically intercepting a vehicle that is about to be used as a weapon, especially in a densely-populated, urban environment. Rather than committing hundreds of millions of dollars to new paperwork, the Government should immediately find

¹⁸ Technology Study at 46623.

¹⁹ Specifications and capabilities for Global T-Fleet are available on the internet at www.global2way.com.

²⁰ The official price tag for background checks is \$633 million, CDL Background Check Rule at 23865-66, and security plans are estimated at \$54 million the first year and another \$11.1 million per year thereafter, Security Plan Rule at 14520.

²¹ Technology Study at 14519.

effective ways to promote, reward, require or otherwise encourage deployment of vehicle tracking and monitoring systems on vehicles and cargo, beginning with those that pose the most severe threat.

Respectfully submitted,

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